general abstract principles. We are not to presume without proof. We are not to imagine guilt, where there is no evidence to raise the presumption. But when one or more things are proved from which our experience enables us to ascertain that another, not proved, must have happened, we presume that it did happen, as well in criminal as in civil cases. Nor is it necessary that the fact not proved should be established by irrefragable inference. It is enough, if its existence be highly probable, particularly if the opposite party has it in his power to rebut it by evidence, and yet offers none; for then we have something like an admission that the presumption is just."

The defendant's case is an *alibi*. What has been adduced by him in the lower court was not in my view adequate to rebut the positive evidence of identification given by the victim of the robbery. The learned president failed to consider that in too readily accepting the purported *alibi* which no doubt was decided upon some 12 or 14 months after the event when nothing of any particular significance happened to fix the minds of these two people to the particular time and date that he failed thereby to give due regard to the prosecution case. It is not sufficient for him to say that this person or that person impressed me as a truthful witness. He must consider has the explanation given by the defence cast a reasonable doubt and has it been satisfactorily proved. Was the best evidence of the *alibi* produced and tested? The failure to call Kong Chye who was identified in court by the accused himself seems to me something which the learned president should take into consideration in weighing the credibility of the evidence both of the accused and his witness as to his presence or absence at the scene of the robbery on the day in question.

It is rare that an appellate court interferes with a finding of fact by the trial court but that it has power to do so cannot be disputed. Following *R.* v. *Low Toh Cheng*,[2] I would say having reviewed all the evidence in the case, and having formed an opinion of its weight and reliability different to that of the learned president I have unhesitatingly come to the conclusion that the accused ought to have been convicted.

I sentence the accused to two years imprisonment.

Order accordingly.

Solicitors: *Natha Singh & Subbiah.*

NEO ENG v. ONG HAI KIAT & ORS.

[O.C.J. (Choor Singh J.) April 6, 1967]

[Singapore — Civil Suit No. 953 of 1966]

Landlord and Tenant — Death of original tenant — Intestacy — Contractual tenancy vesting in Chief Justice — Notice to quit — Claim for possession — Former proceedings — Estoppel — Meaning of "premises" — Whether domestic premises — Whether tenant residing in premises — Control of Rent Ordinance (Cap. 242), s. 16(c).

The plaintiff claims from the defendants possession of land and buildings comprised in Lot 50 of Mukim 17. The plaintiff is owner of the Lot 50 and also the adjacent Lot 49, both of which were acquired by him at different times. The previous owner of Lot 50 let it in 1942 to one *THH* who erected a building partly on Lot 50 and partly on Lot 49. During his lifetime *THH* carried on a charcoal and firewood business on the premises and when he died in 1959, he was survived by his widow and his son the fifth defendant. From 1959 onwards the licence to carry on the business was in the fifth defendant's name. *THH* died intestate and no representation to his estate was taken out. On January 1, 1964, the first four defendants entered into the occupation of the premises in pursuance of a partnership agreement between them and the fifth defendant. In 1964, the plaintiff commenced proceedings in the district court against the first four defendants for possession and trespass. The action was dismissed and his appeal was also dismissed. By a notice to quit dated November 29, 1965 and served on the Chief Justice of Singapore, the tenancy of *THH* was determined as from November 31, 1965. A copy of such notice was also served on the defendants. The present proceedings were commenced on June 1, 1966. The first four defendants concede that they stand or fall with the fifth defendant.

Held: (1) the proceedings in the district court were commenced by the plaintiff before determining the contractual tenancy of the premises and there was therefore no question of the defendants' being trespassers. The present proceedings were commenced after the contractual tenancy had been determined by notice to quit and the plaintiff is not estopped from claiming for possession of the premises from the defendants;

(2) Lots 49 and 50 are both owned by the plaintiff and therefore the entire building stands on land owned by the plaintiff. As long as it is the subject of a single letting it is immaterial whether the building stands on one or more lots of land. The premises in question are premises within the meaning of the Ordinance;

(3) there is clear evidence that the business of timber merchants is being carried on in the premises. The fifth defendant sleeps on the premises in order to look after the stock-in-trade. The fifth defendant's family live in another house nearby. The premises are used substantially for business purposes and cannot be considered as domestic premises merely because some person or persons sleep on the premises. What is being fought for is not a roof over a widow and children but the right to continue the business of timber merchants. The premises are not domestic premises within the meaning of the Ordinance;

(4) the tenant having died and no representation to his estate having been made, the contractual tenancy vested in the Chief Justice. That contractual tenancy having been terminated by the notice to quit, no one else has a right to be on the premises;

(5) the fifth defendant does not reside on the premises within the meaning of the Ordinance and he cannot claim the protection of section 16(c) of the Ordinance. The plaintiff is therefore entitled to an order for possession.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

N. A. Christopher for the defendants.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiff claims from the defendants possession of the land and buildings thereon comprised in Lot 414[50] of Mukim 17.

The following facts are not in dispute. The

plaintiff is the owner of a piece of land comprised in Lot 414^{50} of Mukim XVII (hereinafter called "Lot 50"). Adjacent and contiguous to Lot 50 is a piece of land comprised in Lot 414^{49} of Mukim XVII (hereinafter called "Lot 49"). The plaintiff is also the owner of Lot 49, but Lots 49 and 50 were acquired by him at different times. Lot 50 was purchased by him from Pana Abdulkader Marican in June 1954, while Lot 49 was purchased by him from Ng Ah Lek in January 1960. Originally the said Pana Abdulkader Marican owned both Lots 49 and 50 which were part of a large piece of land. The said Pana Abdulkader Marican mortgaged the land which included Lot 49 in 1918 and it was thereafter sold by the mortgagee; the said Pana Abdulkader Marican retained the land which included Lot 50 until he sold it to the plaintiff as stated above.

The defendants are in occupation of Lot 50 and of a building which is partly on Lot 50 and partly on Lot 49 and straddles the boundary between these two Lots. It is not known exactly when this building was erected but it must have been after 1942 since it was erected by Tan Hock Huat who became tenant of the land in that year or thereabouts. Tan Hock Huat paid the owner Pana Abdulkader Marican ground rent of $5 per month and he remained in possession until when he died. Receipts were issued by Pana Abdulkader Marican to Tan Hock Huat. On the foot of such receipts were the words "no subletting will be allowed". When Tan Hock Huat died in 1959 he left surviving him his widow and his son, Tan Kiat Leng, the fifth defendant. During his lifetime, Tan Hock Huat had carried on a charcoal and fire-wood business on the premises, and after his death his widow and the fifth defendant continued to carry on the business, and from 1959 onwards the licence to do so was in the fifth defendant's name. Tan Hock Huat died intestate, and his widow died in 1961 or 1962 or thereabouts. No representation to the estate of Tan Hock Huat or his widow has ever been taken out. The records of the fire brigade show that a licence to run a timber yard was first issued in 1959, to the fifth defendant, and in 1960 there were four licences, for timber, attap store, fire-wood and charcoal wholesale. On the 1st January, 1964, the first, second, third and fourth defendants trading as Sin Hock Choon Timber Merchants went into occupation of the premises in pursuance of an agreement made with the fifth defendant dated the 3rd January, 1964. The fifth defendant became a partner in the said firm on the 30th January, 1964. In 1964 the plaintiff commenced proceedings in the First Civil District Court against the first, second, third and fourth defendants for possession of the said land and premises and damages for trespass. The plaintiff's claim was dismissed on the ground that the defendants were not trespassers. The plaintiff's appeal against the decision of the First Civil District Court was also dismissed. By a notice to quit dated the 29th November, 1965, and served on the same day on the Chief Justice, Singapore, the tenancy of Tan Hock Huat was determined as from the 31st day of November, 1965. A copy of such notice to quit was served on the defendants. On the 18th June, 1966, the plaintiff commenced the present proceedings.

The first issue that I have to decide is the issue of estoppel which is raised by the defendants. The defendants have pleaded that "the plaintiff is estopped from his claim against the defendants by reason that before the commencement of this action in an action in the First Civil District Court brought by the plaintiff against the first four defendants for possession of the said land and damages for trespass the defendants denied that they were trespassers and that they were wrongfully in occupation of the land and on that issue being tried before the First Civil District Judge, the plaintiff's claim was dismissed with costs. The plaintiff's appeal against the decision was also dismissed and the said judgment remains in force." In my view this submission fails because the proceedings in the First Civil District Court were commenced by the plaintiff before determining the contractual tenancy of the premises and there was therefore no question of the defendants being trespassers in so far as he was concerned. The present proceedings were commenced by the plaintiff after the contractual tenancy had been determined by notice to quit and in my opinion he is not estopped from claiming possession of the premises from the defendants.

Counsel for the defendants concedes that as the first four defendants are on the premises by leave and licence of the fifth defendant, they stand or fall with the fifth defendant and if the fifth defendant has no right to be on the premises, then the first four defendants also have no right to be there. Therefore, what I have to decide is whether or not the plaintiff succeeds in his claim against the fifth defendant.

The first submission of counsel for the plaintiff is that the premises in question are not premises within the meaning of the Ordinance; that part of the building stands on Lot 49 and part on Lot 50 and that the Ordinance was never meant to apply to a piece of land and part of a building on it. I do not accept this submission. Lots 49 and 50 are both owned by the plaintiff and therefore the entire building therefore stands on land owned by the plaintiff. As long as it is the subject of a single letting it is immaterial whether the building stands on one or more lots of land. In my opinion the premises in question are premises within the meaning of the Ordinance.

The next submission of counsel for the

plaintiff is that the premises are not wholly domestic premises; that they are used mainly for business; that section 16 of the Ordinance does not apply and the fifth defendant cannot invoke the protection of section 16. In my view there is clear evidence that the business of timber merchants is being carried on in the premises. It is an exposed business with the stock-in-trade lying in the open and if the fifth defendant sleeps on the premises, as claimed by him it is in order to look after the stock-in-trade. The fifth defendant admits that his wife and children live in another house nearby and therefore the premises in question cannot be considered his home There is overwhelming evidence that the premises are used as business premises but what I have to decide is whether they are also "domestic" premises. In my opinion, where, as in this case, the premises are used substantially for business purposes they cannot be considered to be domestic premises merely because some person or persons sleep on the premises. What is being fought for in this case is not for a roof over a widow and children, but for the right to continue the business of timber merchants. In my opinion, the premises are not domestic premises within the meaning of the Ordinance and section 16 of the Ordinance has no application in this case. The tenant having died intestate and no representation to his estate having been taken out by any person, the contractual tenancy vested in the Chief Justice. The contractual tenancy having been determined by notice to quit served on the Chief Justice, no one else has any right to be on the premises. The plaintiff therefore succeeds in his claim against the defendants for possession of the premises.

The next submission of counsel for the plaintiff is that even if the premises in question are held to be domestic premises and section 16 of the Ordinance applies, the plaintiff is entitled to succeed because the fifth defendant is not a protected person; that when the tenant died his widow became a protected person and was entitled to reside on the premises; that when she died the fifth defendant, her son, did not become a protected person; that there is no transmission of the right to reside on the premises; that the material time for the purposes of section 16 is the date of death of the tenant; that otherwise a member of the family not living on the premises at the date of death of the tenant may come to stay on the premises immediately he or she learns of the notice to quit in order to become a protected person; that the fifth defendant was never a member of the family within the meaning of section 16; that it was the widow of the tenant who was a member of the family within the meaning of section 16; and that when she died, no one else had any right to be on the premises.

Counsel for the defendants submits that the relevant time for the application of section 16(c) is the date on which the notice to quit expired; that when the tenancy was determined on the 31st December, 1965, the fifth defendant was residing on the premises; that the question of protection under section 16 of the Ordinance does not arise until the contractual tenancy is determined; that when the tenant in this case died, the contractual tenancy subsisted for the benefit of the estate of the deceased and vested in the Chief Justice; that when the tenancy was determined on the 31st December, 1965, the fifth defendant, a son of the deceased tenant, was residing on the premises; that the fifth defendant has continued to reside and is still residing on the premises; and that section 16(c) of the Ordinance applies and the plaintiff is not entitled to an order for possession.

In my view, what I must first decide is whether or not the fifth defendant is still residing on the premises, for if he is no longer residing on the premises, the plaintiff is entitled to succeed in his claim for possession. The fifth defendant in his evidence first stated that he lived with his younger brother at 252 Vaughan Road. Later he stated that he lived on the premises in question and that 252 Vaughan Road was his correspondence address. But he admitted that his wife and children lived at 252 Vaughan Road and that they had moved out of the premises in January, 1964, when he started a partnership business on the premises with the first four defendants under the name of Sin Hock Chooon Timber Merchants. He stated further that he drove the lorry of his firm and that at night he slept on the premises. Under cross-examination he admitted that there were large stocks of timber and wood on the premises and that he slept there to guard these stocks. He admitted further that the address on his driving licence was 252 Vaughan Road but explained that that was because the premises in question had no postal number.

Counsel for the defendants submits that there is uncontradicted evidence that the fifth defendant resides on the premises; that there is nothing to prevent a man having two residences and that as the fifth defendant was residing on the premises when the tenancy was determined and is still residing on the premises, the plaintiff's claim for possession must fail.

In my view, the evidence clearly shows that the fifth defendant lives at 252 Vaughan Road; that that is his home where his wife and children live; and that he sleeps on the premises merely to guard the stock-in-trade of the firm of timber merchants. In my opinion he does not reside on the premises within the meaning of the Ordinance and he cannot claim the protection of section 16(c) of the Ordinance. The plaintiff therefore is entitled to an order for possession.

As I have held that the premises in question are not domestic premises and that the fifth

defendant does not reside on the premises, it is unnecessary to decide for the purposes of this case the further points raised by both counsel regarding the application of section 16(c) when a tenant of domestic premises dies leaving a widow and/or children residing on the premises.

There will be an order that the defendants do give up forthwith vacant possession of the premises to the plaintiff and that the defendants pay the plaintiff's costs of this action as taxed.

Order accordingly.

Solicitors: *Hilborne & Co.; N. A. Christopher.*

SIOW WONG FATT v. SUSUR ROTAN MINING LTD. & ANOR.

[P.C. (Lord Hodson, Lord Guest & Lord Upjohn) April 10, 1967]

[Privy Council Appeal No. 34 of 1965]

Mining lease — Expenditure on development — Sublessee entitled to exploit mineral lands — Expenditure on road as part of site development — Claim for compensation from tenor for work done for the development of the mine — Conditions necessary to be fulfilled for valid claim for compensation for work done or for things delivered.

*Contract — Compensation — Act done for another person — Contracts (Malay States) Ordinance, 1950, s. 71.**

Practice and Procedure — Pleadings — Section 71 of Contracts (Malay States) Ordinance not pleaded — Counsel raising it in argument at trial — Federal Court finding in favour of respondent under that section — Whether can be raised on appeal before the Privy Council.

The appellant made discoveries of a few hundred acres of land which gave promise of bearing iron ore. In November 1959 he obtained a prospectors licence and a mining lease was granted to him in September 1961. He then formed a company called the Kota Mining Co. Ltd. (hereinafter called "Kota") and transfered all the benefits and burdens vested in him to the company. By an agreement dated September 19, 1960 Kota transferred its right under the earlier agreements to the first respondent in consideration of $40,000 and a further $40,000 was to be paid at a later stage (which was never paid) with a tribute of $2 for every ton raised. Thus by a train of sub-contracts the first respondent became entitled as a matter of substance to the benefit of the prospectors licence and a right to a mining sub-lease of the mineral land. The first respondent then as commercial owners of the mining rights constructed a road eight or nine miles long leading to the mineral land. But despite that the first respondent never started to mine the land as it appeared that Kota did not carry out their part of the contract. The first respondent then sued Kota for specific performance of the agreement dated September 19, 1960 and they joined the appellant as a defendant against whom they made a claim for specific performance of an alleged oral agreement. When the case came up before Azmi J., as he then was, counsel for the first respondent announced that the action between his client and Kota had been settled so that the action proceeded between the first respondent and the appellant, and Azmi J. held that there was no oral agreement as alleged and dismissed the action. The first respondent then appealed to the Federal Court who found against the first respondent upon the alleged oral agreement but in its favour under section 71 of the Contracts (Malay States) Ordinance and directed an inquiry as to the sum to which the first respondent was thereby entitled ([1965] 2 M.L.J. 45). On appeal to the Privy Council the sole question before their Lordships was whether the Federal Court were right in holding that the first respondent had a valid claim against the appellant under section 71 of the said Ordinance in respect of their expenditure upon the road.

Held: four conditions must be satisfied to establish a claim under section 71 of the Contracts (Malay States) Ordinance, 1950. The doing of the act or the delivery of the thing referred to in the section: (1) must be lawful, (2) must be done for another person, (3) must not be intended to be done gratuitously, (4) must be such that the other person enjoys the benefit of the act or the delivery. These matters must be answered at the time that the act is done or the thing delivered and thus is of fundamental importance. As to the first condition it was clearly in the contemplation of both parties that the first respondent should do this work. As to the second condition the act in this case was not done "for another person"; the road was built by the first respondent for their own benefit, for under the chain of contracts it was the body who was going to exploit the land. That was decisive of this case in favour of the appellant. The respondent also failed to satisfy the third condition because, at the time it (i.e. the building of the road) was done, the respondents did not intend to look to another for reimbursement of their expenditure. As to the fourth condition the appellant had benefited from the building of the road. Accordingly, as only one of the four conditions of the said section was satisfied the appeal should be allowed.

Per Curiam: The doing of the act does not mean that, although one may do the act for one's own benefit, yet if in the end *ex post facto* one does not obtain that benefit but another does, one could then claim against that other under section 71 of the Contracts (Malay States) Ordinance as an act done for him.

Case referred to:—

(1) *Governor-General in Council* v. *Madura* (1948), L.R. 75 I.A. 213 at p. 221.

PRIVY COUNCIL APPEAL.

Ian Baillieu and *Alastair Hill* for the appellant.

Mervyn Heald for the respondents.

The judgment of their Lordships was delivered by,

Lord Upjohn: This is an appeal from the Order dated 18th February 1965 of the Federal Court of Malaysia whereby the appellant was ordered to pay compensation to the respondent under and by virtue of the provisions of section 71 of the Contracts (Malay States) Ordinance.

It raises some difficult though short questions of general importance on the true construction of section 71.

The facts are rather complicated but for the purposes of this appeal can be fairly briefly stated. Parts of Johore are rich in minerals

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* Section 71 reads as follows:

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."